

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3 BEFORE THE HONORABLE GLORIA M. NAVARRO  
4 CHIEF UNITED STATES DISTRICT JUDGE

5 UNITED STATES OF AMERICA, :  
6 Plaintiff, :  
7 vs. : No. 2:16-cr-00100-GMN-CWH  
8 JAN ROUVEN FUECHTENER, :  
9 Defendant. :  
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11 TRANSCRIPT OF CHANGE OF PLEA  
12

13  
14 November 17, 2016

15  
16 Las Vegas, Nevada  
17

18  
19 FTR No. 7D/20161117 @ 12:31 p.m.  
20

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25 (Proceedings recorded by electronic sound recording,  
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## A P P E A R A N C E S

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1 LAS VEGAS, NEVADA, NOVEMBER 17, 2016, 12:31 P.M.

2 --oOo--

3 P R O C E E D I N G S

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5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You may be seated.

7 COURTROOM ADMINISTRATOR: This is the time set

8 for Day 4 of the bench trial in Case No.

9 2:16-cr-100-GMN-CWH, United States of America versus Jan

10 Rouven Fuechtener.

11 Counsel, please make your appearances for the

12 record.

13 MS. ROOHANI: Good afternoon, Your Honor. Elham

14 Roohani and Lisa Cartier-Giroux for the United States.

15 We're joined at counsel table by Special Agent

16 Mari Panovich.

17 THE COURT: Good morning, Ms. Panovich,

18 Ms. Giroux, and also Ms. Roohani.

19 MR. MARCHESE: And good afternoon, Your Honor.

20 Jess Marchese, Benjamin Durham, and Michael Sanft on behalf

21 of Jan Rouven Fuechtener.

22 Thank you for your patience with this.

23 THE COURT: Good morning to you as well,

24 Mr. Marchese. I think it's actually good afternoon now.

25 Good afternoon, Mr. Marchese, Mr. Fuechtener, Mr. Durham

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1 and Mr. Sanft.

2 All right. So I understand that Mr. Fuechtener  
3 has reviewed and signed a plea agreement and that we are  
4 going to be accepting a plea of guilty this morning.

5 Is that still the case?

6 MR. MARCHESE: Yes, Your Honor.

7 THE COURT: All right. So, first of all, we're  
8 going to go ahead and swear in Mr. Fuechtener before I  
9 start asking him a few questions.

10 COURTROOM ADMINISTRATOR: Please raise your  
11 right hand.

12 You do solemnly swear that the testimony you  
13 shall give in the cause now before this Court shall be the  
14 truth, the whole truth, and nothing but the truth so help  
15 you God?

16 THE DEFENDANT: Yes.

17 COURTROOM ADMINISTRATOR: Thank you.

18 You may be seated.

19 THE COURT: All right. So, Mr. Fuechtener, do  
20 you understand that because you have just sworn to tell the  
21 truth, your answers to my questions will be subject to the  
22 penalties of perjury if you do not answer truthfully?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, have you been provided with a  
25 copy of the charge against you to which you are pleading

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1 guilty?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you read, write, and  
4 understand the English language?

5 THE DEFENDANT: Yes.

6 THE COURT: And which -- I guess we can skip  
7 that.

8 So do you feel that you understand the charge  
9 against you?

10 THE DEFENDANT: Yes.

11 THE COURT: And did you have sufficient time to  
12 review the plea agreement with your counsel?

13 THE DEFENDANT: Yes.

14 THE COURT: And did they answer all of your  
15 questions?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you satisfied with the legal  
18 representation they've provided to you?

19 THE DEFENDANT: Yes.

20 THE COURT: All right.

21 So, Mr. Marchese, do you waive the formal  
22 reading of the charges as stated in the Indictment?

23 MR. MARCHESE: We do, Your Honor.

24 THE COURT: All right. So I just need to  
25 summarize for you, to make sure that you understand what

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1 the charges are.

2 You were charged in Count 1 of the Indictment  
3 with Possession of Child Pornography, in violation of Title  
4 18 of the United States Code, Section 2252A(a)(5).

5 It is a crime for any person who knowingly  
6 possesses or knowingly accesses, with intent to view, any  
7 book, magazine, periodical, film, videotape, computer disk,  
8 or any other material that contains an image of child  
9 pornography, that has been mailed or shipped or  
10 transported, using any means or facility of interstate or  
11 foreign commerce, or in or affecting interstate or foreign  
12 commerce, by any means, including by computer, or that was  
13 produced using materials that had been mailed or shipped or  
14 transported in or affecting interstate or foreign commerce  
15 by any means, including by computer.

16 So essentially there are four elements to this  
17 offense.

18 The first one is that you knowingly possessed  
19 image and video files that you knew contained visual  
20 depictions of minors engaged in sexually explicit conduct.

21 The second element is that you knew the visual  
22 depictions contained in the files were of minors engaged in  
23 sexually explicit conduct.

24 The third element is that you knew that  
25 production of such visual depictions involved use of a

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1 minor in sexually explicit conduct.

2 And the fourth element is that the visual  
3 depictions had been either transported in interstate or  
4 foreign commerce or produced using materials that had been  
5 transported in interstate or foreign commerce by a computer  
6 or other means.

7 So do you understand that these four elements  
8 are what the government would have to prove beyond a  
9 reasonable doubt in order for you to be convicted of this  
10 first count in the Indictment?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. Now, the second count is  
13 Receipt of Child Pornography, in violation of Title 18 of  
14 the United States Code, Section 2252A(a)(2), which makes it  
15 a crime to knowingly receive any material that contains  
16 child pornography that has been mailed or using any means  
17 or facility of interstate or foreign commerce, shipped or  
18 transported in or affecting interstate or foreign commerce  
19 by any means, including by computer.

20 There are three elements to this offense.

21 The first one is that you knowingly received  
22 child pornography.

23 The second element is that you knew that the  
24 visual depictions contained in the materials showed a minor  
25 engaged in sexually explicit conduct.

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1                   And the third element is that the visual  
2                   depictions had been mailed, and/or shipped, and/or  
3                   transported in interstate commerce, including by a  
4                   computer.

5                   So do you understand these three elements are  
6                   what the government would have to prove beyond a reasonable  
7                   doubt in order for you to be convicted of this second count  
8                   in the Indictment?

9                   THE DEFENDANT: Yes.

10                  THE COURT: Now, the third count in the  
11                  Indictment is Distribution of Child Pornography, in  
12                  violation of Title 18 of the United States Code, Section  
13                  2252A(a)(2) as well as (b).

14                  And this makes it a crime for any person to  
15                  knowingly distribute any material that contains child  
16                  pornography that has been mailed or, using any means or  
17                  facility of interstate or foreign commerce, shipped or  
18                  transported in or affecting interstate or foreign commerce  
19                  by any means, including by computer.

20                  There are three elements to this offense.

21                  The first one is that you knowingly distributed  
22                  child pornography.

23                  The second element is that you knew that the  
24                  visual depictions contained in the material showed a minor  
25                  engaged in sexually explicit conduct.



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1                   And the third element is that the visual  
2                   depictions had been mailed and/or shipped and/or  
3                   transported in interstate commerce, including by computer.

4                   So do you understand that these three elements  
5                   are what the government would have to prove beyond a  
6                   reasonable doubt in order for you to be convicted of this  
7                   count?

8                   THE DEFENDANT:   Yes.

9                   THE COURT:   All right.

10                  Now, before I accept your plea, I need to ask  
11                  you a few personal questions in order to satisfy myself  
12                  that you are competent to enter a valid plea this  
13                  afternoon.

14                  So if at any time you don't understand my  
15                  question, you want me to repeat it, clarify it, or for any  
16                  reason you want to pause and stop and speak to your  
17                  attorneys, I do encourage you to do so. It is essential  
18                  that you understand each question first --

19                  THE DEFENDANT:   Okay.

20                  THE COURT:   -- before you provide an answer.  
21                  All right?

22                  So, first of all, how old are you, sir?

23                  THE DEFENDANT:   39 years old.

24                  THE COURT:   38?

25                  THE DEFENDANT:   39.

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1                   THE COURT: 39. And how far did you go in  
2 school?

3                   THE DEFENDANT: I finished high school.

4                   THE COURT: All right. So you graduated from  
5 high school.

6                   Now, have you taken any drugs, medicine, pills  
7 of any kind, or any alcoholic beverages in the last 24  
8 hours?

9                   THE DEFENDANT: No.

10                  THE COURT: And are you currently taking any  
11 medication for any illness?

12                  THE DEFENDANT: No.

13                  THE COURT: And is there any medication you feel  
14 that you should be taking, but that for whatever reason  
15 hasn't been provided to you at the jail?

16                  THE DEFENDANT: No.

17                  THE COURT: All right.

18                  And does the government or the defense have any  
19 questions or doubts about the defendant's competency to  
20 plead guilty?

21                  MS. ROOHANI: No, Your Honor.

22                  MR. MARCHESE: No, Your Honor.

23                  THE COURT: All right. So based upon counsel's  
24 representations, the defendant's response, and the Court's  
25 observations, I do find that he is competent to plead in

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1     this matter.

2                   Ms. Roohani, would you like to summarize the  
3     terms of the written plea agreement, the essential terms;  
4     and then we'll ask Mr. Marchese, or any of his counsel  
5     here, to let us know if there's anything additional that  
6     you want to put on the record, or if you disagree with  
7     anything that is represented in the oral recitation. And  
8     then we'll ask Mr. Fuechtener if what is said today orally  
9     in court is the same as what you read when you signed that  
10    plea agreement. We want to make sure that you actually  
11    understood it.

12                  Go ahead, Ms. Roohani.

13                  MS. ROOHANI: Thank you, Your Honor. Your  
14    Honor, this is a plea agreement entered under Federal Rule  
15    of Criminal Procedure 11(c)(1)(A and B).

16                  The parties to this plea agreement are the  
17    United States of America and Jan Rouven Fuechtener, the  
18    defendant in this case.

19                  This plea agreement binds the defendant and the  
20    US Attorney's Office for the District of Nevada. It does  
21    not bind any other prosecuting, administrative, or  
22    regulatory authority, the United States Probation Office,  
23    or this Honorable Court.

24                  The defendant knowingly and voluntarily agrees  
25    to plead guilty to three counts in the Criminal Indictment

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1 which was filed on March 30th, 2006.

2 Count 1, Possession of Child Pornography, in  
3 violation of Title 18 of the United States Code, Section  
4 2252A(a)(5)(B); Count 2, Receipt of Child Pornography, in  
5 violation of Title 18 of the United States Code, Section  
6 2252A(a)(2) and (b); and Count 3, Distribution of Child  
7 Pornography, in violation of Title 18 of the United States  
8 Code, Section 2252A(a)(2) and (b).

9 The defendant also agrees to the forfeiture of  
10 the property as set forth in the plea agreement and the  
11 forfeiture allegations of the Criminal Indictment.

12 The plea agreement includes a waiver of trial  
13 rights.

14 The defendant will not seek to withdraw his  
15 guilty plea after he has entered it with this Court.

16 And in exchange the United States agrees not to  
17 bring any additional charges against the defendant arising  
18 out of the investigation in this district, which culminated  
19 in this plea agreement based upon conduct known to the  
20 United States at this time, except that the United States  
21 reserves the right to prosecute the defendant for any crime  
22 of violence as defined by Title 18, United States Code,  
23 Section 16.

24 The plea agreement also includes the elements of  
25 the offenses, which Your Honor has reviewed with the

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1 defendant and facts supporting the guilty plea.

2 The defendant acknowledges that this Court must  
3 consider the United States Sentencing Guidelines in  
4 determining his sentence, but that the guidelines are  
5 advisory and not mandatory, and that this Court has the  
6 discretion to impose any reasonable sentence up to the  
7 maximum term of imprisonment permitted by statute on each  
8 count.

9 The plea agreement includes offense level  
10 calculations. Under United States Sentencing Guidelines  
11 Section 3E1.1(a), at the time of sentencing, the United  
12 States will recommend that the defendant will receive a  
13 two-level downward adjustment for acceptance of  
14 responsibility unless he fails to truthfully admit the  
15 facts establishing the factual basis for this plea when he  
16 enters a plea, if he fails to truthfully admit facts  
17 establishing the amount of restitution owed to the victims  
18 when he enters his guilty plea, if he fails to truthfully  
19 admits facts establishing the forfeiture allegations when  
20 he enters his plea, if he provides false or misleading  
21 information to the United States, this Court, pretrial  
22 services or the probation office, if he denies involvement  
23 in the offense or provides conflicting statements regarding  
24 his involvement or falsely denies or frivolously contests  
25 conduct relevant to the offense, if he attempts to withdraw

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1 his guilty plea or commits or attempts to commit any crime.

2 The defendant acknowledges that this Court may  
3 base his sentence in part on his criminal history or  
4 criminal record and that the Court will determine these two  
5 things under the sentencing guidelines.

6 The defendant also acknowledges that this Court  
7 may consider any counts dismissed under this plea agreement  
8 and all other relevant conduct charged or uncharged in  
9 determining the guideline range and whether to depart from  
10 that range.

11 The stipulated sentencing guidelines as set  
12 forth in this plea agreement are based upon information  
13 that is now known to the parties.

14 The parties may provide additional information  
15 to the probation office and the Court and good faith  
16 efforts to provide truthful information or to correct  
17 factual misstatements will not be grounds for the defendant  
18 to withdraw his guilty plea.

19 The defendant acknowledges that the probation  
20 office may calculate the sentencing guidelines differently  
21 than the parties have, and that the Court's reliance on  
22 that information shall not be grounds for him to withdraw  
23 his guilty plea.

24 The maximum penalty on each of these counts for  
25 possession, receipt, and distribution for each is a 20-year

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1 prison sentence and a fine of \$250,000 or both.

2 The statutory mandatory minimum sentence for  
3 receipt, Count 2, and distribution, Count 3, is a five-year  
4 prison sentence.

5 The defendant understands that he cannot and  
6 will not receive a sentence that is lower than five years.

7 The defendant also acknowledges that parole has  
8 been abolished in the federal system and that he will be  
9 subject to a term of supervised release of a minimum of  
10 five years and up to a maximum term of life.

11 The plea agreement also includes information  
12 about the special assessment for each count.

13 Regarding our positions on sentencing, the  
14 parties will jointly recommend that the Court run the  
15 sentences imposed on Count 2 and 3 to run concurrently to  
16 each other.

17 The parties will further agree that the sentence  
18 for Count 1 shall run consecutive to the concurrent  
19 sentence imposed on Counts 2 and 3.

20 The United States will seek a sentence within  
21 the applicable sentencing guideline range as determined by  
22 the parties unless the defendant commits an act that would  
23 result in the loss of the downward adjustment for  
24 acceptance of responsibility.

25 The defendant acknowledges that the Court does

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1 not have to follow the recommendations of the parties.

2 The defendant may request a downward adjustment  
3 pursuant to 18 United States Code, Section 3553 or the  
4 sentencing guidelines from any sentence that the Court may  
5 impose.

6 In any event, the United States reserves its  
7 right to defend any lawfully imposed sentence on appeal or  
8 in any post-conviction litigation.

9 The plea agreement also includes terms of  
10 restitution and recognizes that there is mandatory  
11 restitution to the victims under 18 United States Code,  
12 Section 2259.

13 The defendant agrees that the child pornography  
14 images received, distributed, and possessed by him depicted  
15 images of victims being sexually abused, and he further  
16 agrees that a victim's knowledge that images of his or his  
17 abuse being disseminated or possessed by others causes  
18 certain victims to be revictimized, and that has resulted  
19 in harm that is distinct from the harm that is suffered  
20 from actual physical sexual abuse, and that the victims  
21 were harmed by the actions of the defendant.

22 The defendant agrees to pay restitution in the  
23 amount of \$5,000 per identified victim and additionally a  
24 mandatory special assessment of \$5,000 per count pursuant  
25 to the Justice for Victims of Trafficking Act of 2015.



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1           The plea agreement also includes forfeiture --  
2           and I've provided the Court with a copy of the preliminary  
3           order of forfeiture for its review.

4           The plea agreement also sets forth the sex  
5           offender registration requirement guidelines.

6           The defendant understands and agrees that under  
7           the Sex Offender Registration and Notification Act, known  
8           as SORNA, he must register as a sex offender and keep the  
9           registration current in each of the following  
10          jurisdictions: Where he resides, where he is an employee,  
11          and where he is a student.

12          He understands that he must comply with the  
13          registration requirements contained in SORNA and that the  
14          requirements for registration include but are not limited  
15          to providing his name, residence address, and the names and  
16          addresses of any places where he is or will be an employee  
17          or student.

18          He further understands that the requirement to  
19          keep his registration current includes, but is not limited  
20          to, informing at least one jurisdiction where he resides,  
21          is an employee, or is a student no later than three  
22          business days after the change of his name, residence,  
23          employment, or student status.

24          He has been advised and understands that failure  
25          to comply with these obligations will subject him to

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1 additional prosecution for failure to register as a sex  
2 offender under Title 18, United States Code, Section  
3 2250(a).

4 The plea agreement also includes certain  
5 waivers, specifically appellate waivers.

6 The defendant waives all of his appellate  
7 rights, save two.

8 He reserves the right to appeal a sentence that  
9 is higher than the sentencing guideline range as determined  
10 by the Court; and also he reserves his collateral challenge  
11 of ineffective assistance of counsel, which is a  
12 nonwaivable claim.

13 The plea agreement also includes removal and  
14 deportation consequences. The defendant understands and  
15 acknowledges that because he is not a United States  
16 citizen, that it is highly probable that he will be  
17 permanently removed from the United States as a consequence  
18 of pleading guilty under the terms of this plea agreement.

19 Regardless, the defendant desires to plead  
20 guilty, understanding the immigration consequences that may  
21 result from his guilty plea, even if that consequence is  
22 automatic removal from the United States with no  
23 possibility of returning.

24 The defendant acknowledges that he has  
25 specifically discussed these consequences with his attorney.

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1                   And that, Your Honor, sets forth the essential  
2 terms of the plea agreement.

3                   THE COURT: Okay. So just to be clear, the  
4 government will be asking for a guideline range sentence,  
5 but the defendant can ask for a downward adjustment through  
6 a departure or a variance. Is that right?

7                   MS. ROOHANI: Yes, Your Honor. That is correct.

8                   THE COURT: So the only joint agreement is that  
9 Counts 2 and 3 -- joint recommendation is that Counts 2 and  
10 3 will be concurrent --

11                  MS. ROOHANI: Yes.

12                  THE COURT: -- and that Count 1 will be  
13 consecutive to Counts 2 and 3?

14                  MS. ROOHANI: That's correct.

15                  THE COURT: Okay. I just wanted to make sure I  
16 understood that.

17                  All right. So, Mr. Marchese, do you agree with  
18 the recitation by Ms. Roohani?

19                  MR. MARCHESE: I do, Your Honor.

20                  THE COURT: All right.

21                  (Pause in the proceedings.)

22                  THE COURT: Mr. Fuechtener, did you hear the  
23 representations by Ms. Roohani regarding the plea agreement  
24 and its terms?

25                  THE DEFENDANT: Yes.

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1                   THE COURT: And do you feel that you understand  
2 the terms of your plea agreement?

3                   THE DEFENDANT: Yes.

4                   THE COURT: Have you had sufficient time to  
5 discuss your plea agreement with your attorneys?

6                   THE DEFENDANT: Yes.

7                   THE COURT: And have they answered all your  
8 questions about your plea agreement?

9                   THE DEFENDANT: Yes.

10                  THE COURT: And, Ms. Roohani, were there any  
11 formal prior written offers to plead that were either  
12 withdrawn or rejected?

13                  MS. ROOHANI: No, Your Honor.

14                  THE COURT: And, Mr. Fuechtener, are you  
15 satisfied with the legal representation that your attorneys  
16 have provided to you?

17                  THE DEFENDANT: Yes.

18                  THE COURT: All right. So do you understand,  
19 then, that you do not have to enter a plea of guilty this  
20 afternoon, that under the Constitution and laws of the  
21 United States, you do have a right to a trial by a jury, or  
22 by the bench, as we were having previously, and in order to  
23 be convicted either all the jurors, if it was a jury trial,  
24 or the judge would have to agree that you are guilty.

25                  Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: And do you understand that at trial  
3 you would be presumed to be innocent, and the government  
4 would have to prove beyond a reasonable doubt and overcome  
5 that presumption in order to prove you guilty, and that you  
6 would never have to prove that you were innocent?

7 THE DEFENDANT: Yes.

8 THE COURT: And do you understand that during  
9 your trial, the witnesses for the government would have to  
10 come to court here and testify in your presence, but that  
11 your attorneys would have an opportunity to cross-examine  
12 those witnesses and to object to any evidence offered by  
13 the government?

14 THE DEFENDANT: Yes.

15 THE COURT: And do you understand that your  
16 attorneys would also have the right to call witnesses on  
17 your behalf and to present evidence on your behalf?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you understand that while you  
20 have the right to testify at your trial, you would also  
21 have the right not to testify? And if you decided to  
22 remain silent, I would instruct the jury, if it was a jury  
23 trial, that that could not be held against you.

24 THE DEFENDANT: Yes.

25 THE COURT: In a bench trial, likewise, the

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1 judge could not hold that against you if you decided to  
2 exercise your right to remain silent.

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that?

5 And if I accept your plea agreement, do you  
6 understand that you will be waiving and giving up your  
7 right to a trial, that there will be no trial, and instead  
8 I will simply enter a judgment of guilty and sentence you  
9 based on today's guilty plea?

10 THE DEFENDANT: Can I --

11 THE COURT: Yes.

12 (Defendant and his counsel conferring.)

13 THE DEFENDANT: Okay. Yes.

14 THE COURT: All right. So do you understand  
15 that if I accept your plea of guilty today, that you will  
16 be waiving and giving up your right to a trial, and there  
17 will be no trial, and instead I will simply enter a  
18 judgment of guilty and sentence you based on today's guilty  
19 plea?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. And so is that what you  
22 wish to do? Do you wish to waive and give up your right to  
23 a jury trial or any kind of trial?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. Now, because in addition

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1 to waiving and giving up your right to a jury trial, the  
2 offense to which you are pleading guilty is a felony  
3 offense, it's important for you to also understand that you  
4 will be adjudicated a felon; and having a felony conviction  
5 on your record means that you could lose valuable civil  
6 rights, such as the right to vote, the right to sit on a  
7 jury, the right to possess a firearm, and that it is  
8 virtually certain that you would be deported if you are not  
9 a legal-born US citizen?

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Now, the maximum penalty for Count 1  
13 of the Indictment, which is the Possession of Child  
14 Pornography, is a term of up to 20 years. This is  
15 according to a statute that is passed by Congress. And  
16 there's also a fine that could be up to \$250,000. And I  
17 could impose both, up to the maximum of 20 years  
18 imprisonment, and up to the maximum of \$250,000 in fines.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Then as for Count 2, which is the  
22 Receipt of Child Pornography count, do you understand that  
23 because the crime carries a five-year mandatory minimum,  
24 you cannot receive, and I cannot impose, a sentence that is  
25 less than five years of imprisonment?

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1 THE DEFENDANT: Yes.

2 THE COURT: And the maximum term of imprisonment  
3 set by the congressional statute for that -- for the  
4 receipt is 20 years of imprisonment with a fine of up to  
5 \$250,000.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. And then, likewise, for  
9 the distribution of child pornography count, which is Count  
10 3, do you understand that this crime also carries a  
11 five-year mandatory minimum, which means that I cannot  
12 impose and you cannot request a sentence that is less than  
13 five years --

14 THE DEFENDANT: Yes.

15 THE COURT: -- for Count 3?

16 And, again, that term of imprisonment for Count  
17 3 is set by a congressional statute which provides for a  
18 term of up to 20 years in prison and a fine of up to  
19 \$250,000, and I could impose both.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Now, there's also a  
23 special assessment fee that is required by statute of \$100  
24 per count. There's three counts, so there will be a fee of  
25 \$300.



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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you also understand that the  
4 Court may also order you to pay restitution to any  
5 identified victims to the offense to which you are pleading  
6 guilty?

7 THE DEFENDANT: Yes.

8 THE COURT: And in this case, the agreement is  
9 for the \$5,000 per victim that is actually identified.

10 MS. ROOHANI: That is correct, Your Honor.

11 THE COURT: Do you understand this?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Now, the sentencing  
14 commission has issued guidelines to assist the judges in  
15 determining the appropriate sentence within that very large  
16 statutory range of up to 20 years. And the guideline --  
17 the sentencing commission has created the guidelines to  
18 help the judges to determine, depending on the facts of  
19 your particular case, what the sentence range should be.

20 So have you had sufficient time to talk to your  
21 attorneys about the guidelines and how they might apply to  
22 the facts in your particular case?

23 THE DEFENDANT: Yes.

24 THE COURT: And do you feel that your attorney  
25 has answered all your questions about the guidelines?

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1 THE DEFENDANT: Yes.

2 THE COURT: And do you understand that the Court  
3 will not be able to determine your guideline range today?  
4 I can't determine that until after the probation office has  
5 computed its presentence report.

6 THE DEFENDANT: Yes.

7 THE COURT: And do you understand that if the  
8 government is agreeing not to prosecute other counts or  
9 charges, that any relevant conduct related to those counts  
10 or charges can still be considered in the presentence  
11 report and could increase the sentence?

12 THE DEFENDANT: Yes.

13 THE COURT: And do you understand that any  
14 recommendation of the sentence agreed to by your attorney  
15 or the government's attorney is not binding on the Court?  
16 Even if they recommend exactly the same thing, I do not  
17 have to follow their recommendation.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: And do you understand that in some  
21 cases, even after your guideline range has been determined,  
22 I still have the authority to impose a sentence that is  
23 more severe or less severe than your guideline range?

24 THE DEFENDANT: Yes.

25 THE COURT: And do you understand that I might

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1 impose a sentence that is more severe than what is  
2 requested by the attorneys and more severe than the  
3 guideline range?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand that if that  
6 happens, you do not have the right to withdraw your guilty  
7 plea, you will still be bound by your guilty plea?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you understand that both you  
10 and the government have a right to appeal any sentence I  
11 impose, unless you've agreed otherwise in the written plea  
12 agreement?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. Now, parole has been  
15 abolished in the federal system, so if you are sent to  
16 prison you will -- which it's a mandatory five years, so  
17 after the prison sentence is pronounced, you will serve  
18 your time, but you will not be released early on parole.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: And do you understand that in any  
22 case in which a defendant is sentenced to more than a year  
23 in prison, in addition to that term of imprisonment, the  
24 Court may also order a term of supervised release to follow  
25 that term of imprisonment, and the statute provides for a

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1 term of not less than five years and up to a maximum term  
2 of lifetime supervised -- supervision?

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand that while on  
6 supervised release, you could be required to abide by  
7 conditions specified by the Court at the time of  
8 sentencing, and if you violate any of those conditions,  
9 your supervised release could be revoked?

10 THE DEFENDANT: Yes.

11 THE COURT: And do you understand that if your  
12 supervised release is revoked, you could be imprisoned for  
13 the full term of your supervision without credit for time  
14 spent successfully on supervision?

15 THE DEFENDANT: Yes.

16 THE COURT: So, for example, the minimum term of  
17 supervision authorized by the statute is five years. And  
18 if you comply with all the conditions for the first four  
19 years but on the fifth year you violate a condition, you  
20 still could be returned to prison for five years.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: And do you understand that adding  
24 the time spent in prison under the original sentence of  
25 imprisonment, adding to that any additional time that you

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1 would spend in prison if your supervised release is  
2 revoked, would naturally add up to be more than the  
3 original sentence?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. So do you have any  
6 questions for me about anything that we've discussed so  
7 far?

8 THE DEFENDANT: No --

9 THE COURT: Okay.

10 THE DEFENDANT: -- Your Honor.

11 THE COURT: So how do you wish to plead, guilty  
12 or not guilty, to Count 1 of the Indictment, Possession of  
13 Child Pornography?

14 THE DEFENDANT: Guilty.

15 THE COURT: And how do you wish to plead to  
16 Count 2 of the Indictment, guilty or not guilty, to Receipt  
17 of Child Pornography?

18 THE DEFENDANT: Guilty.

19 THE COURT: And how do you wish to plead to  
20 Count 3 of the Indictment, Distribution of Child  
21 Pornography, guilty or not guilty?

22 THE DEFENDANT: Guilty.

23 THE COURT: And are you pleading guilty because,  
24 in truth and in fact, you are guilty and for no other  
25 reason?

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1 THE DEFENDANT: Yes.

2 THE COURT: And has anyone made any threats or  
3 promises to you to force you to plead guilty?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Has anyone told you that if you do  
6 not plead guilty, new additional charges would be brought  
7 against you?

8 THE DEFENDANT: No.

9 THE COURT: Has anyone told you that if you do  
10 not plead guilty, some other negative or adverse action  
11 would be taken against you?

12 THE DEFENDANT: No.

13 THE COURT: And are you pleading guilty because  
14 of any coercion or fear of any co-defendants?

15 THE DEFENDANT: No.

16 THE COURT: And has anyone made any promises to  
17 you about what your sentence will be?

18 THE DEFENDANT: No.

19 THE COURT: Now, do you understand that while  
20 you have the right to remain silent, because you are  
21 pleading guilty, I need to verify that you are factually  
22 guilty?

23 And so I'm going to ask you to waive your right  
24 to remain silent in order to answer my questions, but only  
25 limited to the fact that you agreed to in your plea

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1 agreement on pages 4, 5, and 6.

2 Are you willing to go ahead and answer my  
3 questions?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. So I'm going to skip the  
6 beginning of it that talks about the law enforcement -- how  
7 the undercover agent came to begin the investigation and so  
8 forth, which began August of 2015. By the time there is a  
9 search warrant, we're on page 5, line 5.

10 So on January 21st of 2016, it says here that  
11 the federal -- well, that law enforcement executed a search  
12 warrant at your residence.

13 Is that correct?

14 THE DEFENDANT: Yes.

15 MR. MARCHESE: Your Honor --

16 THE COURT: Yes?

17 MR. MARCHESE: -- if the Court is okay with it,  
18 I've spoken with the government, and the parties would  
19 stipulate to the facts contained with the guilty plea  
20 agreement.

21 And if the Court -- obviously, if the Court is  
22 okay with it, you just ask Mr. Fuechtener if he's in  
23 agreement with those facts rather than going through all  
24 three or four pages of it.

25 THE COURT: I wasn't going to go through all

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1 three or four pages, I was just going to go through the  
2 elements of the actual offense.

3 So is that correct, there was a search warrant  
4 that was executed at your home?

5 THE DEFENDANT: Yes.

6 THE COURT: And there were nine devices that  
7 were found in your home that contained child pornography  
8 images and videos; is that right?

9 THE DEFENDANT: Yes.

10 THE COURT: And were these downloaded from the  
11 Internet?

12 THE DEFENDANT: I don't know from all nine  
13 devices. I mean --

14 THE COURT: Were any of those downloaded from  
15 the Internet?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. And did you know that  
18 the images that were in those devices were child  
19 pornography?

20 THE DEFENDANT: Yes.

21 THE COURT: Did you know that you possessed  
22 them?

23 THE DEFENDANT: Yes.

24 THE COURT: And did you download them or receive  
25 them from the Internet?



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1 THE DEFENDANT: Not all of them.

2 THE COURT: Did you know that they had been  
3 downloaded or in some other way transported in interstate  
4 or foreign commerce?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. Did you have a GigaTribe  
7 account with the user name of Lars45?

8 THE DEFENDANT: Yes.

9 THE COURT: And did you have a Hotmail e-mail  
10 account with the name larsschmidt22?

11 THE DEFENDANT: Yes.

12 THE COURT: And a Skype account with the name  
13 larsusa22?

14 THE DEFENDANT: Yes.

15 THE COURT: And did you offer to distribute  
16 child pornography by sharing your GigaTribe Lars45 folder?

17 THE DEFENDANT: Yes.

18 THE COURT: And do you have a Grindr profile?

19 THE DEFENDANT: Yes.

20 THE COURT: And did you engage in chats to  
21 coordinate watching child pornography?

22 THE DEFENDANT: No.

23 THE COURT: I'm on -- let's see, page 6,  
24 paragraph 8. This is the Grindr profile associated with  
25 two e-mail addresses, janrouven@aol.com and

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1 larsschmidt22@hotmail.com --

2 THE DEFENDANT: I didn't --

3 THE COURT: -- chats to --

4 THE DEFENDANT: -- do --

5 MS. ROOHANI: Your Honor?

6 THE COURT: Yes.

7 MS. ROOHANI: If I may?

8 THE COURT: Did I misunderstand what's  
9 represented in paragraph 8?

10 MS. ROOHANI: No, you didn't misunderstand  
11 what's represented in paragraph 8.

12 Paragraph 8 is not necessary to meet one of the  
13 elements of the offense. The government will be presenting  
14 this evidence at sentencing to support a sentencing  
15 enhancement.

16 THE COURT: All right.

17 MS. ROOHANI: So it is our position that  
18 Mr. Fuechtener does not have to admit that to enter a  
19 guilty plea today.

20 THE COURT: All right. Then we'll skip that  
21 one.

22 The -- let me see. What's the next one here?

23 MS. ROOHANI: And, Your Honor, the same for  
24 paragraph 9.

25 THE COURT: Right. I wasn't going to ask about

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1 that. I didn't see how that related to the elements.

2 Okay.

3 So, Mr. Fuechtener, just to be fair here, you've  
4 read this plea agreement; is that right?

5 THE DEFENDANT: Yes.

6 THE COURT: And did you read the facts that  
7 begin on page 4 and go all the way through to page 6?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. And so with the exception of  
10 paragraph 8, I suppose, do you agree with all the other  
11 facts that are in the plea agreement?

12 THE DEFENDANT: And 7, 7 was not my chat.

13 THE COURT: Ms. Roohani, paragraph 7 is the  
14 distribution. And unless it's satisfied in some other way  
15 by using the GigaTribe account.

16 MS. ROOHANI: Your Honor, if Mr. Fuechtener is  
17 not prepared to admit the factual allegations as set forth  
18 in the plea agreement, the government is prepared to  
19 proceed with the trial.

20 And so if he needs a moment to speak with his  
21 attorneys about this, I'm more than happy to give him that  
22 time.

23 (Defendant and his counsel conferring.)

24 MR. MARCHESE: We can proceed, Your Honor.

25 THE COURT: All right. So I'm looking at page 4

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1 of your plea agreement. The first paragraph has to do with  
2 the investigation before you even were involved, and same  
3 with number 2.

4 But paragraph 3 is the search warrant. You  
5 agree with the information in paragraph 3; is that right?

6 THE DEFENDANT: Yes.

7 THE COURT: And then paragraph 4 is about what  
8 was found during the search warrant. You agree with the  
9 information in paragraph 4?

10 THE DEFENDANT: Yes.

11 THE COURT: Then paragraph 5 is about the amount  
12 of child pornography found in the devices and so forth.

13 Do you agree with the facts in paragraph 5?

14 (Defendant and his counsel conferring.)

15 THE DEFENDANT: Your Honor, it is correct, but I  
16 believe there are many duplicates.

17 THE COURT: Right. And I do remember that. And  
18 I was wondering if that was one of the concerns. So even  
19 though it says there's over 9,000, so far at trial we had  
20 established that there was a possibility of duplication.

21 So -- but, otherwise, you agree with the facts  
22 in paragraph 5?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. And then in paragraph 6 it  
25 talks about the GigaTribe account.

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1 Do you agree with the facts in that paragraph?

2 THE DEFENDANT: Yes.

3 THE COURT: And then paragraph 7 is the one that  
4 talks about the Skype user name and then sharing the  
5 GigaTribe Lars45 folder.

6 Do you agree with the facts in that paragraph?

7 THE DEFENDANT: Yes.

8 THE COURT: And then we're skipping paragraphs 8  
9 and 9. Paragraph 10 is as to the forfeiture count and the  
10 items that you are no longer going to be asking to have  
11 returned to you; is that right?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. So you agree to the  
14 paragraph 10 as well?

15 THE DEFENDANT: Yes.

16 THE COURT: Any other questions, Ms. Roohani,  
17 that you want me to ask?

18 MS. ROOHANI: Your Honor, I -- did you go over  
19 the appellate waivers with the defendant? That was the  
20 only -- that's the only thing I don't have marked off as  
21 having been reviewed with him. Page 15.

22 THE COURT: I did advise him that he has a right  
23 to -- both you, the government and he, has the right to  
24 appeal any sentence that I impose unless it's been agreed  
25 to otherwise in the written plea agreement.

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1 MS. ROOHANI: That's fine. Thank you, Your  
2 Honor.

3 THE COURT: All right. So, Mr. Fuechtener,  
4 since you do acknowledge that you are, in fact, guilty as  
5 charged in the Indictment, since you are aware what your  
6 right to a trial is and what the maximum punishments are  
7 for each of the offenses, I will accept your guilty plea.

8 And it's the finding of this Court that in the  
9 case of United States versus Jan Rouven Fuechtener that the  
10 defendant is fully competent and capable of entering an  
11 informed plea, that his plea of guilty is knowing and  
12 voluntary, supported by an independent basis in fact  
13 containing the essential elements of the offenses charged,  
14 and your plea is therefore accepted.

15 I am now going to order a presentence  
16 investigation report. And I do urge your full and complete  
17 cooperation with the probation office when they meet with  
18 you to obtain information.

19 You do have the right to have your attorney with  
20 you during that investigation. And I do urge your full and  
21 complete cooperation because that information will be used  
22 by the Court in determining what the appropriate sentence  
23 should be.

24 Once you have obtained the first draft, I call  
25 it the first draft, the rough draft, from the probation

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1 office, please review it carefully with your attorney. He  
2 has a deadline before he can request changes to be made.

3 Then there will be a final draft. Once there's  
4 a final draft of the report, that's the only one I see is  
5 the final draft, but you should also look at that final  
6 draft yourself to make sure that there aren't any new  
7 mistakes and that all the mistakes that you wanted changed  
8 were changed.

9 If there's anything lingering that you want me  
10 to consider changing, please let your attorneys know so  
11 that they can file a written memorandum with the Court  
12 which will be due five business days before sentencing.  
13 And the government will have three business days before  
14 sentencing if they wish to respond in writing.

15 Do we have a sentencing date, Aaron?

16 COURTROOM ADMINISTRATOR: We do, Your Honor.  
17 Thursday, March 16th, 2017, at 9:00 a.m. in this courtroom,  
18 7D.

19 THE COURT: Okay. So Thursday, March 16th, at  
20 9:00 a.m.

21 Does that work for you, Ms. Roohani, or Ms.  
22 Cartier-Giroux?

23 MS. ROOHANI: That's fine with us, Your Honor.

24 THE COURT: And, Mr. Marchese, Thursday, March  
25 16th, at 9:00 a.m.? Is that convenient for you?

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1                   MR. MARCHESE: Yes, Your Honor.

2                   THE COURT: Okay. So that will be the date and  
3 time of your sentencing.

4                   If it changes for any reason, your attorney will  
5 be the one to let you know.

6                   At your sentencing you will have the right to  
7 make a statement if you would like to. You don't have to,  
8 but if you would like to, you may address the Court before  
9 I impose sentence. Some people prefer to write a letter or  
10 read a letter, and that's acceptable too. Your attorneys  
11 will be here to speak on your behalf.

12                  If you have friends or family who would like to  
13 submit letters for me to read before sentencing, make sure  
14 that they provide them to your attorney so that he can file  
15 them in the proper format. They will be public documents.  
16 So I don't need to know anybody's phone numbers or  
17 confidential information, like dates of birth and things  
18 like that.

19                  Now, there is a preliminary order of forfeiture  
20 that I've received here.

21                  Mr. Marchese, did you have a chance to review  
22 that with your client?

23                  MR. MARCHESE: Yes, we have.

24                  THE COURT: Okay. There's a number of different  
25 items starting on page 2 and going into page 3. It looks



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1     like there's at least 35 different items.

2                 So are you in agreement with this preliminary  
3     order of forfeiture?

4                 MR. MARCHESE: We've spoken with the government,  
5     and they are in agreement that any items that do not  
6     contain explicit material can be released.

7                 THE COURT: Is that right, Ms. Roohani?

8                 MS. ROOHANI: That is correct, Your Honor.

9                 And before the final order of forfeiture is  
10     entered, we will confer, and the final order of forfeiture  
11     will be the final version.

12                We would ask that you enter this today until we  
13     can determine what devices those are.

14                THE COURT: All right. So I'll go ahead and  
15     sign it with today's date so the government can get started  
16     with the forfeiture.

17                And are there any other -- you're standing up,  
18     so I'm thinking there's something else.

19                Is there anything else that the parties need me  
20     to address? Okay. What about the evidence that's already  
21     been submitted? Do you need that for purposes of  
22     sentencing?

23                And in terms of the date, I don't know if you're  
24     going to have any mitigation specialist or psychological  
25     reviews or things. So are you going to need any of the

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1 information that's already been admitted for anything?

2 MS. ROOHANI: Your Honor, with your permission,  
3 the government will take our evidence binder; and if it's  
4 necessary for us to meet any type of burden, we'll present  
5 it to the Court at the time of sentencing.

6 THE COURT: All right.

7 MR. MARCHESE: I'll leave it up to the Court.  
8 We have duplicates of anything that's been submitted.

9 THE COURT: All right.

10 MR. MARCHESE: So it's not an issue for us.

11 THE COURT: All right. Okay.

12 MS. ROOHANI: And really, Your Honor, for us  
13 it's really the fact that there is actual explicit material  
14 and child pornography in some of the exhibits. So if  
15 nothing else, we do want to take those exhibits with us and  
16 not leave them with the Court.

17 THE COURT: All right. You can get together  
18 with Aaron and make sure you make a list so we know where  
19 everything is.

20 All right. I think that's it.

21 Well, thank you for agreeing to come in over the  
22 lunch hour so we could see if this was something we could  
23 get done and not lose out on the trial time.

24 So we'll see you back here Thursday, March 16th,  
25 at 9:00 a.m.

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COURTROOM ADMINISTRATOR: Off record.  
(The proceedings concluded at 1:15 p.m.)

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I certify that the foregoing is a correct  
transcript from the electronic sound recording  
of the proceedings in the above-entitled matter.



5/22/17

Donna Davidson

Date